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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 533

A AND B, ... *Petitioners,*

v.

C AND D, ... *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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PARAGON PRINTING CO., LITTLE ROCK

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

The petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Arkansas entered in this matter May 10, 1965, and as to which rehearing was denied June 7, 1965.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of Arkansas (R. 397-409) is reported in 239 Ark. 406, 390 S.W. 2d 116, and is printed in Appendix A hereto, *infra,* p. 1-a.

JURISDICTION

The judgment of the Supreme Court of Arkansas was entered May 10, 1965 (R.410). It affirmed the decree of the Probate Court of Pulaski County, Arkansas, which was entered May 11, 1964 (R.48-51). Rehearing

was denied by the Supreme Court of Arkansas June 7, 1965 (R.415).

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3).

QUESTION PRESENTED

Whether B, the natural mother of an illegimate child E, was afforded that notice and opportunity for hearing enjoined by the principle of due process of law as a condition to the foreclosure of her rights in an adoption proceeding by C and D.

CONSTITUTIONAL PROVISION INVOLVED

Fourteenth Amendment
Section 1

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

On January 24, 1961, the Respondents C and D secured an interlocutory order of adoption (R.9-10) of an infant female child, E, in the Probate Court of Pulaski County, Arkansas, on a petition (R.2-4) alleging that E had been born illegitimate to one of the Petitioners, B, on January 18, 1961, at St. Vincent Infirmary, Little Rock, Arkansas. The petition was accompanied by a "Consent of Adoption" (R.5-6), signed by B before a notary public, which recited that B had given birth to E, that E was illegitimate, that B did not know who the father was, that B waived all rights to E, and that B waived service of process and notice of hearing. A final order of adoption was made and entered on July 25, 1961 (R. 11-12).

On June 10, 1963, B, joined pro forma by the Petitioner A, her husband, to whom she was married after the birth of the child (R.60), petitioned the Probate Court to order the adoption record opened for B's inspection (R.13-17). Such an order was made and entered the same day (R.20-21). On June 26, 1963, A and B filed a petition (R.22-26), amended April 15, 1964, (R.44-45) seeking vacation of the adoption on the grounds of fraud, erroneous proceedings against a person of unsound mind, and unavoidable casualty, preventing B from defending her rights in the adoption proceeding. C and D resisted by a response pleading general denial and limitations (R. 46-47).

The gist of the litigation is the claim of A and B that the "Consent of Adoption" was signed by B shortly after she had given birth to E, when she was still in the hospital under the influence of drugs and in a distressed mental and emotional state, after having been told by

some person, whom she took to be a member of the hospital staff or a physician, that E had died and that she would be required to sign some papers in connection with the death, so that when she signed the "Consent of Adoption", she signed it in the mistaken belief that it was something different from a consent and waiver and was, therefore, not a voluntary consent to the adoption of E nor a waiver of any of her rights as the natural mother of E. The issues were tried on April 15, and 16, 1964, and the Probate Court made and entered its decree (R.48-51) in the matter on May 11, 1964, denying the relief sought by A and B, dismissing their petition as amended, and finding that B gave birth at St. Vincent Infirmary, Little Rock, Arkansas, to an illegitimate female child, E, on January 18, 1961, that pursuant to an interlocutory decree of adoption entered January 24, 1961, and a final decree of adoption entered July 25, 1961, C and D had had the custody of E since January 24, 1961, that B had entered her appearance in the adoption proceeding by a "Consent of Adoption" executed by her on January 20, 1961, which was in proper form, that both A and B and C and D had submitted themselves to the jurisdiction of the Probate Court, that when B executed the "Consent of Adoption" she was of full legal age, of sound mind, and had the capacity to exercise her normal faculties of understanding, reason, and will, that she was not, at the time under the influence of any drugs that would affect her ability to understand the nature of her acts, that she was of sound mind at all times pertinent to the adoption proceedings, that no fraud was perpetrated on B by any person in connection with the execution of the "Consent of Adoption" or in connection with the adoption proceedings, nor was there any overreaching by any person dealing with her in this connection, that the final decree

of adoption was made after full disclosure of the relevant facts to the Probate Court, without fraud on the court, and with all necessary parties before the court.

A and B appealed to the Supreme Court of Arkansas June 4, 1964 (R.52). On May 10, 1965, that court affirmed the decree of the Probate Court (R.410) and on June 7, 1965, denied rehearing (R.415).

The issue of due process of law lies at the root of this case; it was raised by the first pleading filed by A and B (R.13) which, in essence set up lack of notice and opportunity to defend, and was urged throughout, up to the last pleading filed, viz; the petition for rehearing (R.411-412).

REASONS FOR GRANTING THE WRIT

In affirming the decree of the Probate Court of Pulaski County, Arkansas, the Supreme Court of Arkansas, at the end of its opinion, 239 Ark. at 414, 390 S.W. 2d at 121 (See opinion, Appendix A hereto, *infra,* p. 10-a), made the following observation:

> As set forth in this opinion, we, like the Probate Judge, find no fraud, or overreaching, and are convinced that the consent was obtained at a time when B was fully cognizant of the significance of her actions. Still, we think it appropriate to make some comment relative to this method of acquiring children for adoption, which has now become an established practice in some areas of the State. Acquiring a child in this manner is most often unwise. The natural mother, after some period of time, marries, and sets up her home, and frequently decides that she desires to have her child back. Such a situation may well mean grief, sorrow, and expense for both the mother and the adoptive parents, if the mother is able to learn the whereabouts of the child. When in the hospital, though fully aware that she is giving up her child, her thinking processes may well be clouded by the nature of the predicament in which she finds herself. In addition, the general policy in such cases, which has developed over the years, of the adoptive parents paying all the expenses connected with the birth of the child, is somewhat akin to the actual sale of babies, which has occurred, though, of course, unlawfully, in some sections of the country. We think constructive legislation could well be enacted in the adoption field by the General Assembly.

This language reveals the critical flaw in the decisions of both the Probate Court and the Supreme Court of

Arkansas. It is tantamount to an express declaration that the procedure by which the adoption was effected was improper, indeed that the procedure was unfair.

If the question of due process had not been an integral part of this case from the very outset, it was injected at this point by the Supreme Court of Arkansas by virtue of the quoted portion of its opinion. This criticism of the procedure involved clearly goes to the matter of notice and opportunity for hearing. It recognizes that, although the letter of the law might have been observed, yet the basic requirement of fairness was lacking.

This Court has characterized due process as the very essence of a scheme of ordered justice, *Brock* v. *North Carolina,* 344 U.S. 424, 428, and it has aptly been said that the term asserts a fundamental principle of justice, rather than a specific rule of law, and is thus not susceptible of more than a general statement of its intent and meaning, which are ascertained in the history of its specific applications to cases requiring judicial decision. *Territory* v. *Craig Enterprises, Inc.,* 355 P. 2d 397 (Alaska). In other words, due process is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts. *Hannah* v. *Larche,* 363 U.S. 420, 442.

It is this concept of due process which has found application in such adoption cases as *Hughes* v. *Aetna Casualty & Surety Co.,* 234 Or. 426, 383 P. 2d 55, holding that it is against every principle of natural justice to divest a parent of rights relative to a child without notice and an opportunity to be heard, and *In re Adoption of G - - - -,* 389 S.W. 2d 63 (Mo. App.), invalidating a consent to adoption on the ground of "duress by force of circumstances". In the latter case it was found that

"the force of circumstances pried the infant away from her and circumstances prevented her from recovering it . . . . " 389 S.W. 2d at 69.

Since the principle of due process cannot be confined within a fixed formula, it is apparent that, in determining whether its minimal demands have been satisfied, it is not necessarily sufficient to inquire, as here, whether there was "unavoidable casualty", "duress", "overreaching", etc., for this may mislead to the procrustean method of attempting to fit the facts into a legal category, instead of regarding fundamentals. Thus, it is urged, the Supreme Court of Arkansas, not finding a handy label for the facts in this case, though disapproving the procedure followed as improper, could perceive no alternative to an affirmance of the lower court's decision.

The evidence in this matter is voluminous, and for the most part, as between the parties, quite conflicting. So, it is not feasible to comment extensively thereon. However, in bare outline, the undisputed facts are that B, a 23-year old unmarried woman (R.97, 98), for approximately nine months prior to January 18, 1961, was pregnant. She had concealed her condition (R.63). She had not consulted a physician (R.65, 80). In the afternoon of January 17, 1961, she felt the first pain of labor, and at about 11:30 p.m. of that day she had friends take her to the hospital (R.61). Her child, E, was born at the hospital on January 18, 1961, at about 9:25 a.m. (R. 60). Between this time and January 21, 1961, at about 9:30 a.m., when B left the hospital (R.60), she signed a "Consent of Adoption" dated January 20, 1961, (R.5-6) by virtue of which the Probate Court decreed the adoption of E by C and D, the final decree of adoption being made and entered July 25, 1961 (R.7-8, 11-12). The proceedings to set aside the adoption were instituted June 10, 1963

(R.13-17). Whatever the specific circumstances surrounding the execution of the "Consent of Adoption" may have been, one fact, sworn to by the person who secured the "Consent of Adoption" from B, the attorney for C and D, is that this attorney told B at the time that such a consent was a full and absolute consent, that "she could not change her mind" (R.275). The Supreme Court of Arkansas expressly pointed this out in its opinion. See 239 Ark. at 411-412, 390 S.W. 2d at 119 (See opinion, Appendix A hereto, *infra*, p. 7-a). The significance of the point is that the advice was erroneous, because there is no such thing in Arkansas as a consent to adoption as to which a mother cannot "change her mind". *Martin* v. *Ford*, 224 Ark. 993, 277 S.W. 2d 842; *Combs* v. *Edmiston*, 216 Ark. 270, 225 S.W. 2d 26. The Supreme Court of Arkansas, however, though considering the matter weighty enough to notice particularly, failed to heed the misleading character of the statement, and the importance of the misconception it might have implanted in B's mind. This one thing, alone, might well have convinced B that it would have been futile to attempt a revocation of consent.

When this case is viewed from its four corners, it is easy to see why the Supreme Court of Arkansas had misgivings about it. It is suggested that a more penetrating analysis would have revealed to that court the basis of those misgivings, that is, a failure of due process.

The Supreme Court of Arkansas said, "We think that constructive legislation could well be enacted in the adoption field by the General Assembly."

The petitioners, however, urge upon this honorable Court that, so far as this case is concerned, the correction should be in the form of adjudication.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

SUPREME COURT OF ARKANSAS
No. 3514

Opinion Delivered May 10, 1965

A and B

---------- Appellants — Appeal from Probate Court of Pulaski County Second Division

v.

C and D

---------- Appellees — Affirmed

CARLETON HARRIS, Chief Justice

This appeal questions the validity of an adoption. As a matter of considering the welfare of the child involved, and in keeping with the spirit of the adoption laws, the litigants will not be referred to by name, but rather, letters of the alphabet will be used in discussing the facts. B is the natural mother of the child, a female infant, hereinafter called E. A is the husband of B. C and D are the adoptive parents of E. On January 24, 1961, C and D obtained a temporary order of adoption of E in the Probate Court of Pulaski County on the basis of a petition alleging that E was the illegitimate child of B, having been born on January 18, 1961, at a Little Rock hospital. Filed with the petition was a "Consent of Adoption," executed by B before a Notary Public, and reciting that B had given birth to E; that E was illegitimate, and that B waived all rights to E, and waived service of process and notice of hearing. A final order of adoption was entered on July 25, 1961. On June 26,

1963, B, joined by A, whom she had met, and married in Texas, in June, 1962, filed a petition to vacate the adoption on the basis of fraud and unavoidable casualty, and C and D responded with a general denial, also asserting that the period of limitation (Ark. Stat. Ann. § 56-112 [1947]) had expired prior to the commencement of the action. After hearing testimony, the Probate Court of Pulaski County (Second Division) entered its order, dismissing the petition (as amended), and finding *inter alia,* that B, at the time of executing the consent of adoption was of full legal age, of sound mind, and possessed the capacity to exercise her normal mental faculties. "She was not, at this time, under the influence of any drugs that would affect her ability to understand the nature of her acts." The court further found that no fraud was perpetrated by any person in connection with execution of the consent, "nor was there any overreaching by any person dealing with her in this connection." From the judgment so entered, appellants bring this appeal.

The core, or essence, of this litigation is the contention of appellants that the consent of adoption was signed by B not long after she had given birth to E, and at a time when she was hospitalized, under the influence of drugs, and in a distressed mental and emotional state. It is asserted that she was told by some individual, whom she understood to be a member of the hospital staff, or a physician, that her baby had died, and she would be required to sign some papers in connection with the death; that when signing the consent, she was not aware that she was consenting to the adoption of E, nor aware that she was waiving any of her rights as the natural mother. According to her testimony, B, in 1960, was employed in the bookkeeping department of a Little Rock concern. She had never been married, but discovered that she was pregnant. By wearing a tight girdle and full skirts,

she concealed her condition, and continued with her duties. B received no prenatal care. On January 17, 1961, at about 11:30 p.m., she went to St. Vincent's Infirmary, accompanied by four girl friends, who were unaware of the real reason for the trip to the hospital; B told the nurse that she thought she might have appendicitis, and when a doctor came in, the girls were asked to leave. Upon examination, the physician asked if she were pregnant, and she admitted that she was, and was immediately taken to the delivery room. B stated that she received a shot, and remembered nothing else until the next day at noon, when, she stated, a white man was in her room and told her that she had a brother coming to visit her from Forrest City. She definitely placed this time as Wednesday, because she knew that the air-raid siren sounded on Wednesday at noon, and the noise had aroused her. She told the man that she did not have any relatives in Forrest City, and remembered nothing further until late in the afternoon, when Bonita Haston (since married, and now named Griffith), a friend, came to visit. According to B, it was dark in the room by that time, and a man came in and told her that her baby had died. She was unable to describe the man, but remembered that he said there would be some papers for her to sign in order to give the hospital the authority to make an autopsy. She stated that she felt sleepy, as she termed it, "druggy." This occurred on January 18. The witness stated that on the 19th, a nurse came into the room and gave her some pills, and perhaps a shot; that later, around noon, or in the afternoon, a man and woman came into the room with some papers. She testified that she was shown where to sign, and was given a pen to sign with, but that she was not advised as to the nature of the papers. It was her thought that they were the papers which had been referred to the day before. After these persons left, her boss, a Mrs. Taylor, came and

visited for twenty or twenty-five minutes, asking if B needed any money, and advising that she could obtain a loan, if necessary. B testified that she (B) had about $170.00 cash in her purse, and about $175.00 in the bank. On the morning of the 20th, her brother (who lived in North Little Rock) visited her, and she told him that she injured herself when falling while bowling, and this was the reason for her being in the hospital. Later upon being advised by a nurse that she could go home, she was taken by her brother to North Little Rock. From there she went to her mother's home located in a small town in Arkansas, and stayed until the following Sunday, when she returned to Little Rock, and resumed work.

After marrying, she went to Dr. John Roberts Phillips in Houston for treatment of a cyst, and during the examination, was asked if she had ever been pregnant. Since her husband was with her, B responded in the negative, but subsequently told Dr. Phillips that she had been pregnant, and had delivered a baby, but that it had died.[1] Upon the advice of the doctor, she revealed these facts to her husband. A insisted that they come to Little Rock to ascertain if the baby actually had died, and they employed an investigator, Reed Thompson. Later, Thompson advised them that the baby was alive, and had been adopted, but would not give any information as to the people who had obtained the adoption. A stated that Thompson suggested that B see a psychiatrist, and Thompson further stated that he had learned that B had given her consent to the adoption, and that he did not care to have anything to do with the case.

Bonita Griffith testified by deposition that on the afternoon of Wednesday, January 18, 1961, she visited B

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[1] Dr. Phillips, by deposition, verified that B had told him that her baby had died.

at St. Vincent's, and was in the room, when a white man, in hospital clothing, entered and told B that her baby had died, and that there would be some papers for her to sign. Mrs. Griffith stated that she had learned at B's place of employment that B was in the hospital, and she went to St. Vincent's and made inquiry. She was told that no one by that name was registered, but on confirming from the office, where B was employed, that her friend was indeed in the hospital, Mrs. Griffith stated that she went from room to room until she found B on the third floor.[2]

The Little Rock physician and obstetrician, who delivered the baby, testified that he was on the staff of St. Vincent's Infirmary, and was the physician on call for unassigned patients in obstetrics and gynecology for the month of January, 1961.[3] He stated that on the 18th, he received a call from the emergency room, and found that he had been assigned a patient who was in labor. He ascertained the name and read the information on the emergency records. This patient was B. He testified that the records reflected that she had received thorazine (a tranquilizing drug) at 1:00 a.m., and received demerol and scopolamine at 1:45 a.m., and at 3:00 a.m. He explained that the purpose of demerol is to relieve pain, and the purpose of scopolamine is to dry up secretions, so that the patient will not be likely to vomit. The doctor testified that B told him that she was un-

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[2] The witness testified that she looked into the various rooms on the first floor, then the second floor, and repeated the process until she found B on the third floor. On cross examination, she stated that the rooms on the first floor had patients in them. Subsequently, both local doctors, whose testimony is hereinafter discussed, stated that there are no patients on the first floor at St. Vincent's.

[3] He explained that the physician on call for unassigned patients took care of those people who came to the hospital without a doctor, who did not request a particular doctor, and who needed attention in his specialty.

married, but had been able to conceal her pregnancy from her employer, parents, and friends; that she did not know exactly what she was going to do, but was considering "adopting her baby out." He said that he told her he would attempt to help arrange an adoption if she desired. The baby was delivered at 9:25 a.m. on the 18th. The witness stated that he saw her again between 4:00 and 5:00 p.m. when he checked his patients at the hospital, and at that time she told him that she wished to have the baby adopted. The doctor testified that he then contacted a couple who had desired to adopt a baby, but this couple had changed their minds, and no longer desired to adopt a child. He then called an attorney, with whom he was acquainted, to ascertain if the attorney knew of a suitable couple who wished and desired an adoption. Subsequently, C and D called the doctor's office, and made an appointment to see him. Appellees went to his office, and they discussed the adoption and the usual arrangements, including financial arrangements.[4] The witness stated that he saw B each day until the day of her discharge from the hospital, which was January 21, and that, in his opinion, she was given no drugs that would have affected her at the time of the signing of the consent to adoption. He said that he advised her on Friday that the attorney would be in to see her for the purpose of getting adoption papers signed, and that she was entirely rational and lucid. The doctor testified that on the next morning (Saturday, January 21) he asked her if she had signed the papers for adoption, and she replied that she had.

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[4] C, the adoptive father, paid the fee of $150.00, and also paid all hospital bills, which the doctor said was customary in this type of adoption case. "It's usually understood, as you well know, the adopting parents usually pay the expenses."

Dr. Thomas H. Wortham[5] was not acquainted with B personally, and never did see her, but testified that, based upon an examination of B's records, reflecting the medication that she had received, it was his opinion that the medication would affect the reasoning process for about eight hours, and, at the most, twelve hours.

According to the Little Rock attorney, who prepared adoption papers on instructions from C and D, he proceeded on Friday, January 20, to St. Vincent's Infirmary, in the company of Mrs. Helen Ward, a secretary and Notary Public in the Attorney General's office. They entered the room which had been pointed out as the one occupied by B, the lawyer introduced himself and Mrs. Ward, and explained the purpose of the visit. He testified that B appeared to be expecting him, and indicated that she knew who he was, and the purpose of his visit. The witness stated that he told her he represented the people who wanted to adopt her child, but that his relationship with his clients was confidential, and that if she consented to the adoption he would not be able to disclose the name of the client. He said that he also explained that he did not represent her (B); that the consent was a full and absolute consent, and that "she could not change her mind." The attorney stated that he handed her the paper, and that she looked at it for a minute or two, then signed, remarking that she thought it was best for the child. He said that B sat up in bed most of the time that he and Mrs. Ward were in the room. The lawyer further testified that Reed Thompson called and informed him that A had married a woman who had given her child for adoption, and asked if he might have the permission of the witness to tell A the name

[5] C, at the suggestion of the attending physician, obtained a doctor of his choice to examine the child, before proceeding further with the adoption. He selected Dr. Wortham.

of the attorney (who had handled the adoption), and inquired whether the latter would consent to see A. After receiving permission, A made a visit to the office, and stated that his wife was very upset because she had permitted her child to be adopted; that she was under the care of a phychiatrist, and had been advised to try and get the child back. The lawyer was quite positive that A did not say that B had been informed in the hospital that her baby had died. At the request of A, a letter was directed to his clients, setting out appellants' feelings in the matter, but C and D replied that they did not desire to talk with A, and felt that in remaining unidentified, the best interests of child would be served.

Mrs. Helen Ward verified all that the attorney had said, stating that he had explained to B the meaning of the consent to adoption, and advising that it would be final. Mrs. Ward quoted B as saying that she had thought about the matter, and realized fully what she was doing; that she could not care for the baby properly, and would rather that it would be reared in a home with two parents, who could look after it, and that she was glad that a nice couple would get the baby.

The record reflects that B, while in Houston, Texas, had consulted Paul V. Ledbetter, Jr., a psychiatric social worker, and two psychiatrists. In answering interrogatories, Ledbetter stated that B did not tell him that her baby had died. He further stated that it was his understanding "that at no time did she believe the child to have died." There was no testimony from the two Houston psychiatrists.

We think the preponderance of the testimony supports the findings of the Probate Judge. In addition to the testimony, which we feel preponderates in favor of

appellees, the acts of B clearly indicate that she was aware of the fact that she had consented for the child to be adopted. For instance, while stating that she was told that the baby had died, B made no inquiry about funeral arrangements, nor did she ever inquire as to where the baby was buried. Although aware of the fact that she had incurred financial obligations for medical expenses while in the hospital, and though stating that she had saved some money for this purpose, B left the hospital without consulting, or making arrangements, with any hospital authority for payment of these bills; nor did she ever make any payment. As stated, we think the evidence is convincing that B, not only did not have any fraud practiced upon her, but was also fully cognizant of the nature of the instrument executed, *i.e.*, she was aware that she was irrevocably giving up her rights to E.

It is asserted that the Probate Court erred in receiving testimony that C and D were proper persons to rear the child. Very little evidence was offered on this point, and certainly the testimony was only incidental to the major issue. We agree that, in this particular hearing, the suitability of the adoptive parents was not in question, but we are unable to see that any prejudicial error was committed. In fact, as is known by the attorneys, this court tries Probate and Chancery cases *de novo*, and we think the evidence is ample to sustain the court's judgment, absent the testimony referred to.

Finally, it is urged that the consent to adoption was not properly executed. Appellants point out that the adoption statute requires a written consent, verified by affidavit, and they assert that Mrs. Ward only witnessed and acknowledged B's signature. It is true that the evidence does not reflect that B held up her hand while Mrs. Ward recited a formal oath, but we think there was

substantial compliance with the statutory requirement. Mrs. Ward *was present* in the room; Mrs. Ward *did see* B sign the consent; Mrs. Ward *did hear* the explanation given B by the attorney representing C and D, and it is obvious that this appellant executed the instrument with the full intent to do that which is required by the statute. Ark. Stat. Ann. § 28-206 (Repl. 1962) provides:

"Every affidavit shall be subscribed by the affiant, and the certificate of the officer before whom it is made shall be written separately, following the signature of the affiant."

These requirements, of course, were met in the instant case. In *Cox* v. *State,* 164 Ark. 126, 261 S.W. 303, we said:

"So here we think if appellant signed the affidavit for the purpose of swearing to it, knowing that the clerk regarded his act of signing the affidavit as a method of making affirmation, the jury was warranted in finding that appellant was sworn."

We accordingly find no merit in this contention.

As set forth in this opinion, we, like the Probate Judge, find no fraud, or overreaching, and are convinced that the consent was obtained at a time when B was fully cognizant of the significance of her actions. Still, we think it appropriate to make some comment relative to this method of acquiring children for adoption, which has now become an established practice in some areas of the State. Acquiring a child in this manner is, most often, unwise. The natural mother, after some period of time, marries, and sets up her home, and frequently decides that she desires to have her child back. Such a situation may well mean grief, sorrow, and expense for both the mother and the adoptive parents, if the mother is able to

learn the whereabouts of the child.[6] When in the hospital, though fully aware that she is giving up her child, her thinking processes may well be clouded by the nature of the predicament in which she finds herself. In addition, the general policy in such cases, which has developed over the years, of the adoptive parents paying all expenses connected with the birth of the child, is somewhat akin to the actual sale of babies, which has occurred, though, of course, unlawfully, in some sections of the country. We think constructive legislation could well be enacted in the adoption field by the General Assembly.

Finding no reversible error, the judgment is affirmed.

Justices Johnson and Holt, not participating.

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[6] In some instances, prospective adoptive parents have themselves made all arrangements, including financial, with the mother, and, of course, in all such cases, the natural parent is always aware of who has her child.

END